

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONNA J. ZAVECZ : CIVIL ACTION
:
v. :
:
YIELD DYNAMICS, INC. : NO. 03-5023

MEMORANDUM and ORDER

Juan R. Sánchez, J.

November 15, 2004

Donna J. ZavecZ asks this Court to apply Pennsylvania law to the two conversion counts remaining against Yield Dynamics Inc. For the reasons that follow, we agree.

Donna ZavecZ brought this action in Lehigh County Court, seeking a declaratory judgment that Yield Dynamics failed to release 9,800 escrowed shares of its stock to ZavecZ in violation of the Agreement for Purchase and Sale of Assets and that Yield Dynamics wrongfully refused to issue to ZavecZ 49,000 shares resulting from a stock split. Yield Dynamics removed the case to this Court, which has jurisdiction under 28 U.S.C. § 1332 because citizenship is diverse and the amount in controversy exceeds \$75,000.

This Court granted ZavecZ partial summary judgment on counts I and III, finding she is entitled to the escrowed shares and the stock split shares as a matter of law. The two remaining counts aver conversion.

FACTS

ZavecZ and her husband, Terence ZavecZ, are Pennsylvania residents. Yield Dynamics is a California corporation with its principal place of business in California. On May 21, 1999, Donna

and Terrence Zavec, acting as shareholders and officers of TEA Systems Corporation, entered into the Asset Purchase Agreement with Yield Dynamics at their residence in Alburtis, Pennsylvania. In return for the assets of TEA Systems Corporation, the Zavecs received shares of Yield Dynamics common stock.

Yield Dynamics argues it is entitled to withhold the two blocks of shares as recoupment or set off against claimed damages. Yield Dynamics sued Donna and Terrence Zavec and TEA Systems Corporation in California alleging trade secret misappropriation, breach of contract and fraud. The essence of Yield Dynamics's California claim is that the Zavecs failed to deliver all the software they were obligated to deliver under the Asset Purchase Agreement and Terrence Zavec continues to use software or knowledge he sold to Yield Dynamics in a new business.

DISCUSSION

A federal court should apply the choice-of-law rules of the state in which it sits. *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 496, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941); *Shuder v. McDonald's Corp.*, 859 F.2d 266, 269 (3d Cir. 1988). Thus, Pennsylvania choice-of-law rules will determine whether California or Pennsylvania substantive law controls the conversion question in this case.

The Pennsylvania Supreme Court adopted a rule more flexible than *lex loci delicti*, employing a hybrid of the most significant relationship approach of the Restatement (Second) of Conflicts and the governmental interest approach. *Griffith v. United Airlines, Inc.*, 416 Pa. 1, 21- 22, 203 A.2d 796, 805 (1964). In applying the hybrid approach, Pennsylvania courts conduct a two-step analysis: “[f]irst, the court must look to see whether a false conflict exists. Then, if there is no false conflict, the court determines which state has the greater interest in the application of its law.”

LeJeune v. Bliss-Salem, Inc., 85 F.3d 1069, 1071 (3d Cir. 1996).

Under California law, conversion is the wrongful exercise of dominion over another's personal property in denial of or inconsistent with his rights in the property. The elements of conversion are (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by wrongful act inconsistent with the property rights of the plaintiff; and (3) damages. *In re Emery*, 317 F.3d 1064, 1069 (9th Cir. 2003) (citations omitted).

The elements of a claim for conversion under Pennsylvania Law are: (1) the deprivation of another's right in, or use or possession of, property, (2) without the owner's consent, and (3) without lawful justification. *Universal Premium Acceptance Corp. v. York Bank and Trust Co.*, 69 F.3d 695, 704 (3d Cir. 1995).

When a case presents a true conflict, Pennsylvania choice-of-law rules “call for the application of the law of the state having the most significant contacts or relationships with the particular issue.” *In re Estate of Agostini*, 311 Pa.Super. 233, 252, 457 A.2d 861, 871 (1983). Pennsylvania courts have abandoned the rule of *lex loci delicti* in favor of a less restrictive approach combining the methodologies of a “government interest analysis” and the “significant relationship” approach of the Restatement (Second) of Conflicts § 145 (1971)¹. *Normann v. Johns-Manville*

¹Section 145 The General Principle

(1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.

(2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

- (a) the place where the injury occurred,
- (b) the place where the conduct causing the injury occurred,
- (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and
- (d) the place where the relationship, if any, between the parties is centered. These contacts

Corp., 406 Pa. Super. 103, 108, 593 A.2d 890, 893 (1991).

In this case, the parties entered into the contract for the shares in Pennsylvania, the shares should have been delivered to Zavec in Pennsylvania, and Zavec lives in Alburtis, Pennsylvania, and has no significant relationship with California. Therefore, the law of Pennsylvania applies. Accordingly, this court enters the following:

ORDER

AND NOW, this 15th day of November, 2004, it is hereby ORDERED that Pennsylvania law will apply. Defendant's Motion in Limine (Document 30) is GRANTED in part and DENIED in part. Trial will be bifurcated under Fed. R. Civ. P. 42(b) as to liability and damages. The first phase shall contain no reference to Yield Dynamics's financial condition. Defendant shall produce financial statements immediately following any adverse verdict as to liability. Defendant shall deliver all of the outstanding shares to Zavec no later than the outset of trial in conformity with this Court's Order of September 9, 2004.

BY THE COURT:

____/s/ Juan R. Sánchez _____
Juan R. Sánchez, J.

are to be evaluated according to their relative importance with respect to the particular issue. Restatement (Second) of Conflict of Laws, § 145.